

**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**In Reply Refer to:**  
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In re: WLTK(FM), Broadway, Virginia  
Facility ID No. 40648  
File No. BALH-991215AAY

WBHB-FM, New Market, Virginia  
Facility ID No. 12600  
File No. BALH-991215ABF  
Applications for Assignment

Dear Counsel:

The staff has under consideration: (1) the above-captioned applications proposing to cross-assign the licenses of stations WLTK(FM), Broadway, Virginia, and WBHB-FM, New Market, Virginia, between Massanutten Broadcasting Company, Inc. ("Massanutten") and HJV Limited Partnership ("HJV"), (2) a Petition to Deny the applications filed January 28, 2000 by Mid Atlantic Network, Inc. ("Mid Atlantic"),<sup>1</sup> (3) additional responsive pleadings,<sup>2</sup> and (4) an amendment to the assignee's portion of the assignment application ("Amendment"), filed January 4, 2001 by HJV. For the reasons set forth below, we deny the petition and grant the applications.

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<sup>1</sup> Mid-Atlantic is the licensee of stations WKCY and WKCY-FM in Harrisonburg, Virginia, and WACL(FM), Elkton, Virginia.

<sup>2</sup> These documents include: HJV's Opposition to Petition to Deny, filed February 10, 2000; and Mid Atlantic's Reply to Opposition to Petition to Deny, filed February 25, 2000 (pursuant to a Consent Motion for Extension of Time filed February 22, 2000).

*Background.* Five radio stations in the Harrisonburg, Virginia market, including WBHB-FM, New Market, Virginia, are currently attributable to HJV.<sup>3</sup> HJV proposes to swap WBHB-FM, a Class A station, to Massanutten in exchange for Massanutten's Class B1 station WLTK(FM), plus a payment of \$1,720,000 from HJV to Massanutten. Massanutten is also the licensee of WBTX(AM), Broadway-Timberville, Virginia, in the same market. Additionally, in the Amendment, HJV attached a redacted copy of a Reciprocal Local Marketing Agreement ("RLMA") among HJV, its commonly owned sister corporation M. Belmont VerStandig, Inc. ("MBV"), and Massanutten. In the RLMA, HJV/MBV would provide certain programming and other services for WLTK, and Massanutten would provide similar programming and other services for WBHB-FM, pending approval of the assignments. Massanutten and HJV's proposed swap of the two stations is consistent with the numerical limits in our radio local ownership rules, 47 C.F.R. §73.3555.<sup>4</sup> As noted, Massanutten and HJV are currently operating the stations they seek to acquire pursuant to the RLMA.

In response to the December 27, 1999 *Public Notice* announcing acceptance of the applications for filing, Mid Atlantic filed a Petition to Deny, alleging anti-competitive effects on local advertisers in the Harrisonburg market. Specifically, Mid Atlantic stated that after the proposed transaction, HJV would control over 40% of the local advertising revenue in the Arbitron-defined metro market for Harrisonburg, a market with fourteen commercial radio stations. Our independent analysis indicates that HJV would control 42.6% of the advertising revenue in the market after the swap.

*Discussion.* The proposed transaction is a station swap, which will allow HJV to upgrade WBHB-FM from a Class A facility to a Class B1. We have considered the potential competitive impact of this transaction as reflected in post-merger market structure, revenue shares, and other factors affecting post-merger competition.

We note initially that the percentages of market advertising revenue that will result from this swap are within the range of those that have already been approved by the Commission. According to the BIA Media Access Database ("BIA"), HJV's station WBHB-FM garners 3.5% of the local advertising revenue in the Harrisonburg radio market, compared to 4.2% for Massanutten's WLTK. Overall, the five stations attributed to HJV account for 41.9% of advertising revenue, with Mid Atlantic's three stations accounting for 38%; the two groups advertising revenue share thus totals 79.9%. The swap will increase HJV's share by 0.7%, to 42.6%. This level of concentration is consistent with levels approved in other cases. *See, e.g.,*

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<sup>3</sup> HJV's commonly owned sister corporation, M. Belmont VerStandig, Inc., is the licensee of WAMM-FM, Bridgewater, Virginia, and WHBG(AM), WQPO(FM), and WSVA(AM), Harrisonburg, Virginia. HJV is the licensee of WBHB-FM.

<sup>4</sup> Because the RLMA results in HJV/MBV's owning, operating, or having control over six stations in the Harrisonburg market pending approval of the assignment applications, in the Amendment HJV attached a multiple ownership showing indicating that, using the Commission's current definition of "radio market," there are 19 stations in the relevant market. *See Notice of Proposed Rule Making, In the Matter of Definition of Radio Markets*, MM Docket No. 00-244, FCC 00-427 (December 13, 2000). A single licensee can therefore own up to 6 stations in that market, not more than 4 of which are in the same service (AM or FM). *See Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996), §202(b)(1)(d), *codified as* 47 C.F.R. §73.3555(a)(1). If the proposed transactions are approved and consummated, HJV/MBV will be the licensee of a total of 2 AM and 3 FM stations.

*CHET-5 Broadcasting, L.P.*, 14 FCC Rcd 13041, 13044 (1999), in which the approved assignment/transfer increased the assignee/transferee's market revenue share by 1.7%, from 40.2% to 41.9%; *see also NewCity Communications, Inc.*, 12 FCC Rcd 3929, 3955 (1997) (approving transfer resulting in control of 52.4% of radio advertising revenues in Syracuse, New York market). In addition, since the parties are exchanging facilities, each will own exactly the same number of stations in the same services after the swap as before. The Harrisonburg market will have the same number of stations and owners post-swap as pre-swap, and the owners will have essentially the same percentage of advertising revenue in the market. Any coverage and population gains HJV will realize from the swap will be primarily out-of-market.<sup>5</sup> In short, the market will not change in any significant respect.<sup>6</sup>

Further, the combined advertising revenue of HJV and petitioner Mid Atlantic, the second-largest radio licensee in the market, does not pose disqualifying market concentration under our existing cases. *See Shareholders of AMFM, Inc.*, 15 FCC Rcd 16062 (2000) (approving transactions in Akron, Ohio and Cedar Rapids, Iowa, where the post-merger advertising revenue shares of the top two groups in the markets would be 82.6% and 80.8%, respectively). HJV and Mid Atlantic will have a combined total revenue share, both pre- and post-swap, of under 80%, with Mid Atlantic's market revenue share only 4.6% below that of HJV.<sup>7</sup> There is no evidence that these two entities have engaged or will engage in concerted, anti-competitive behavior; indeed, Mid Atlantic's filing of the instant Petition to Deny indicates to the contrary.

Based on the foregoing analysis, we find no substantial and material questions of fact as to the effect of the proposed swap between HJV and Massanutten on diversity and economic competition. In addition, we have reviewed the assignment applications and find that Massanutten and HJV are both fully qualified, and that approval of the proposed transactions is in the public interest.

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<sup>5</sup> Mid Atlantic's contour maps appear to indicate that the only community in Rockingham County (which constitutes the Harrisonburg market) of which HJV will gain new coverage is Grottoes, a town of 1,544 people.

<sup>6</sup> As part of its competition argument, Mid Atlantic contends that the proposed station swap would further concentrate an already concentrated market, as measured by the Herfindahl-Hirschman Index, or HHI. The Commission does not afford HHI analyses the persuasive weight suggested by Mid Atlantic. *See Alton Rainbow Corporation*, 14 FCC Rcd 16764, 16775 n. 20 (1999) ("*Alton Rainbow*"); *Great Empire Broadcasting, Inc.*, 14 FCC Rcd 11145, 11151 (1999) (Commission believes "mechanical application" of HHI and other Horizontal Merger Guidelines may provide misleading answers to competitive issues in the context of local radio mergers; therefore, Commission applies the standards reasonably and flexibly to specific facts and circumstances). In any event, the pre-swap HHI for the Harrisonburg market is 3415.66; post-swap the HHI would increase 49.28 points to 3464.94. "Mergers producing an increase in the HHI of less than 50 points, even in highly concentrated markets post-merger, are unlikely to have adverse competitive consequences and ordinarily require no further analysis." *Department of Justice and Federal Trade Commission Horizontal Merger Guidelines*, §1.51(c) (3d ed. February 1998). *See also Alton Rainbow*, 14 FCC Rcd at 16776.

<sup>7</sup> It bears noting that the station with the highest percentage of the Harrisonburg market revenue, 22.5%, is Mid Atlantic's station WKCY-FM, and that its revenue share is over 4% higher than that of the second-highest revenue producer, HJV's WSVA(AM).

Accordingly, IT IS ORDERED, That, the Petition to Deny filed by Mid Atlantic Network, Inc. IS DENIED; the application to assign the license of station WLTK(FM) from Massanutten Broadcasting Company, Inc. to HJV Limited Partnership (File No. BALH-19991215AAY), and the application to assign the license of station WBHB-FM from HJV Limited Partnership to Massanutten Broadcasting Company, Inc (File No. BALH-19991215ABF) ARE GRANTED.

Sincerely,

Linda Blair, Chief  
Audio Services Division  
Mass Media Bureau

cc: David Tillotson, Esq.